

Notice of Allowability

Application No.

10/601,020

Examiner

Agnieszka Boesen

Applicant(s)

BRANCH ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to response submitted October 6, 2006 and interview on October 26, 2006.
2. ☒ The allowed claim(s) is/are 49-74 and 77-89.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Art Unit: 1648

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Megan Williams on November 9, 2006.

The application has been amended as follows:

IN THE CLAIMS:

In claim 49, line 4 and 5, delete "comprising a nucleotide sequence corresponding to SEQ ID NO: 1 and"

In claim 67, line 4, delete "comprising a nucleotide sequence shown in SEQ ID NO: 1 and"

In claim 85, line 4 and 5, delete "comprising a nucleotide sequence corresponding to SEQ ID NO: 1 and"

Cancel claims 75, 76, 90, and 91.

SPECIFICATION:

On page 6, line 25, delete hyperlink "See <http://www.ncbi.nlm.nih.gov>."

Examiner's statement for Reasons of Allowance

The following is an examiner's statement of reasons for allowance: Applicants have discovered that polypeptides of SEQ ID NO: 2, 3, 4, 5, and 6, which are not encoded by a

Art Unit: 1648

standard reading frame and which are not derived from HCV polyprotein, are translated in the reading frame of SEQ ID NO: 1. Using peptides of SEQ ID NO: 2, 3, 4, 5, and 6 in the method of diagnosing Hepatitis C virus infection has not been suggested or taught by prior art. The following references pertinent to the current invention are cited:

Walewski et al., RNA, 2002, Vol. 8, p. 557-571.

Walewski et al., RNA, 2001, VOL. 7, p. 710-721.

Claims 49, 67, and 85 were amended to clarify the HCV nucleic acid molecule.

Claims 75 and 76 were canceled to correct claim dependency.

Claims 90 and 91 have been canceled as being drawn to non-elected subject matter, claims 90 and 91 are not eligible for rejoinder.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Applicants arguments

The response to the Office action on October 6, 2006 is acknowledged. Applicant's arguments have been fully considered and are persuasive. Applicant's argues that the non-statutory obviousness double patenting rejection over Patent 7,052,830, which issued to the parent application, is improper because the patented and the currently claimed methods were restricted in the parent application. Examiner agrees with Applicant's arguments, thus rejection of claims 49-89 under non-statutory obviousness double patenting **is withdrawn**.

Art Unit: 1648

Claims 49-74, and 77-89 made of record on October 6, 2006 amended by the current Examiners amendment will be printed in the issued patent.

Conclusion

Claims 49-74, and 77-89 are allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnieszka Boesen whose telephone number is 571-272-8035.

The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AB

Agnieszka Boesen, Ph.D.

11/14/06

Stacy B. Chen 11/14/06
STACY B. CHEN
PRIMARY EXAMINER